IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No. 323/2005

Decided on: March 13, 2006

State of Himachal Pradesh **…Appellant.**

VERSUS

Raj Kumar and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1] No

For the appellant: **Mr. C.B. Singh, Deputy Advocate General.**

For the respondents: **Mr. Ajay Mohan Goel, Advocate.**

Surjit Singh, Judge

State of Himachal Pradesh is aggrieved by the judgment of the learned Additional Sessions Judge, whereby accepting the appeal of the respondents, against the judgment of the trial Magistrate, respondents' conviction and sentence for an offence under Section 332 read with Section 34 IPC, have been set aside and they have been acquitted.

2. Relevant facts may be summed up thus. On 10.6.2000, HC Suresh Kumar alongwith Constable Mam Chand had allegedly gone towards Balmiki Basti for routine patrolling. Around 7.30 p.m., respondent Raj Kumar came out of a grocery shop situated by the side of the road in Balmiki Basti. He was heavily drunk and started

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Whether the reporters of the local papers may be allowed to see the judgment? Yes.

hurling abuses at the above named two police officials. He even assaulted them. He caught hold of HC Suresh Kumar by his uniform shirt near the shoulder. His brother Deepak Kumar, the second respondent, pulled the collar of the shirt of said Suresh Kumar and two-three buttons of the shirt came off and fell at the site. The two respondents then gave kicks and fist blows to Suresh Kumar. In the meanwhile, HC Amarjeet Singh from Police Station, Nahan, happened to reach there. He, with the intervention of some other persons, rescued the Head Constable. Respondent Raj Kumar was overpowered. The police officials made him to board a bus with a view to taking him to the Police Station. Second respondent Deepak Kumar, with an intent to helping Raj Kumar to run away, pulled him out of the bus, as a result of which Raj Kumar fell down and sustained an injury on his left eye. However, both the respondents ran away from the spot. The matter was reported to the police by Suresh Kumar by sending a written complaint from the spot. The police registered the case formally. HC Suresh Kumar was got medically examined. A few scratch marks on the dorsal aspect of his right hand and an abrasion on the terminal phalanx of the middle finger of right hand were noticed. The matter was investigated by ASI Balak Ram of Police Station Sadar, Nahan. The Investigating Officer prepared the site plan, took into possession the shirt of Suresh Kumar and also recovered two buttons of his shirt from the spot. He also recorded the statements of certain witnesses, under Section 161 of the Code of Criminal Procedure and ultimately the respondents were challaned.

3. The respondents were chargesheeted for offences under Sections 332 and 504 read with Section 34 IPC by the trial Magistrate. On their pleading not guilty, they were put on trial. At the end of the trial, both of them were convicted of an offence under Section 332 read with Section 34 IPC and sentenced them to undergo imprisonment till the rising of the Court and pay fine of Rs.1,000/- each.

4. The respondents felt aggrieved by the judgment of the trial Magistrate and appealed to the Court of learned Sessions Judge. The learned Additional Sessions Judge, to whom the appeal was assigned, accepted it vide impugned judgment dated 4.6.2005 and acquitted both the respondents of the offence under Section 332 read with Section 34 IPC.

5. Grievance of the appellant-State (State of H.P.) is that the evidence has not been appreciated in the right perspective by the learned Additional Sessions Judge and this has resulted in wrong acquittal of the respondents.

6. Having heard the learned Deputy Advocate General and the learned counsel for the respondents and having been taken through the record of the case, I do not think that the judgment of the learned Additional Sessions Judge calls for any interference.

7. It is made out from the prosecution's own evidence that the so-called independent witness of the incident, namely, PW-6 Jaswant Singh, has been introduced and that this witness is known to HC Amarjeet Singh, who allegedly reached the spot, when the incident was taking place.

8. PW-6 Jaswant Singh claims that though he saw the incident and also saw Raj Kumar falling from the bus, when his brother tried to pull him out with a view to enabling him to escape, an overall reading of his statement shows that he could not have been on the spot. In his examination-in-chief, he says that about 7 – 7.30 p.m., he and one Gurjeet Singh were travelling by bus No.HP-17-6285, which left Shimla for Paonta Sahib. This witness and Gurjeet Singh were going to Paonta Sahib, per his testimony. Now, according to this witness, the bus reached the spot around 7 – 7.30 p.m. The report, which HC Suresh Kumar sent from the spot, is timed 7.45 p.m. and as per this report the incident took place at 7.30 p.m. PW-6 Jaswant Singh further stays that by that very bus they went to Paonta Sahib the same evening and that the bus left bus-stop of Nahan around 8 or 8.15 p.m. Case was registered on the basis of the report Ex. PW-1/A, sent from the spot by HC Suresh Kumar, at 8.10 p.m., per contents of column No.3(c) of FIR Ex. PW-5/A. The Investigating Officer of the case, Shri Balak Ram, PW-8 says that after the registration of the case, he went to the spot for investigating and prepared the site plan Ex. PW-8/A, recorded the statements of witnesses Jaswant Singh, Gurjeet Sing and HC Amarjeet Singh and also took into possession two buttons from the spot as also the shirt of HC Suresh Kumar vide Memos Ex. PW-1/D and Ex. PW-1/C. Both these memos are attested by Gurjeet Singh and PW-6 Jaswant Singh and they are dated 10.6.2000. Now, when the Investigating Officer had gone to the spot after the registration of the case at 8.10 p.m. and it was thereafter that he started

investigating the case, how could he have recorded the statements of Jaswant Singh and Gurjeet Singh under Section 161 of the Code of Criminal Procedure and associated them as witnesses to the recovery of the buttons from the spot and seizure of the allegedly torn shirt of HC Suresh Kumar, when PW-6 Jaswant Singh says that they left for Paonta Sahib the same evening by the same bus around 8.15 p.m. and reached their place around 9.15 p.m.

9. The abovesaid position apart, Jaswant Singh and his companion Gurjeet Singh are not named as witnesses of the incident in the *ruka* Ex. PW-1/A, which HC Suresh Kumar sent from the spot. Further, Jaswant Singh (PW-6) admits that he has acquaintance with HC Amarjeet Singh, though he denies that for this reason he has made false statement, at the behest of said Amarjeet Singh.

10. The abovesaid facts and the circumstances leave no doubt that witness Jaswant Singh has been introduced to strengthen the prosecution version.

11. The story put forward by the prosecution is further made doubtful by the fact that though PW-1 HC Suresh Kumar says that he was given beating by the two respondents with kicks and fist blows and within two-three hours of the incident he was medically examined, yet only one abrasion on the last terminus phalanx of the left middle finger and multiple scratches on the dorsal aspect of the right hand were noticed. If he was beaten up by two persons by kicks and fist blows, many more injuries were supposed to be there on his person.

12. It has come in the evidence that respondent Raj Kumar sustained a serious injury on his left eye, which necessitated his shifting to the PGI, around the same time when the incident is alleged to have taken place. The prosecution version is that Raj Kumar sustained the aforesaid injury when his brother Deepak Kumar, the other respondent, pulled him out of the moving bus to enable him to run away from the custody of the police. To prove this version, the prosecution examined Suresh Kumar (PW-1), Amarjeet Singh (PW-3) and Jaswant Singh (PW-6). As already noticed, Jaswant Singh's testimony is quite doubtful, rather unbelievable. Amarjeet Singh (PW-3) is contradicted with respect to this aspect of the matter because in his statement under Section 161 of the Code of Criminal Procedure, which is Ex. DA and with which he was duly confronted, there is no mention of this fact. The bald statement of HC Suresh Kumar qua this fact cannot be accepted to conclude that Raj Kumar received the injury in the manner alleged by the prosecution, because it is controverted with equal force by the respondents and the witnesses examined by them, particularly, DW-5 Sunita Devi, wife of respondent Raj Kumar. Further, it has come in the evidence that before HC Suresh Kumar was taken to the hospital by the police for his medical examination, respondent Raj Kumar had already been taken by his relatives to the hospital with injury to his left eye, which, according to PW-7 Dr. Krishan Kishore and DW-1 Dr. S.S. Rathore, was grievous in nature. Both these doctors have stated that Raj Kumar was complaining that he had been beaten up by the police people, resulting in an injury to the eye.

13. The above discussion probablises the defence version that Raj Kumar was beaten up by the police people, namely Amarjeet Singh (PW-3) and HC Suresh Kumar (PW-1) and when in the course of such beating Raj Kumar sustained a bleeding injury on his eye, they got panicky and cooked up a false story and to buttress that story they introduced Jaswant Singh, an acquaintance of PW-3 Amarjeet Singh, as a witness. Consequently, the appeal is dismissed.

(Surjit Singh)
March 13, 2006(sd) **Judge.**